

Salem City School District

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June 30, 2006

REQUEST FOR REVIEW OF FUNDING COMMITMENT DECISION LETTER

Applicant: Salem Middle School, John Fenwick Elementary School
Billed Entity Number: 8728 and 8727 respectively
Form 471 Application No.: 537179 and 536745
Funding Year: 2006
Funding Request Number: 1487022 and 1485797
FCDL Date: 05/02/2006 and 05/16/2006
CC Docket No.: 02-6

Salem Middle School and John Fenwick Elementary School (Schools) hereby appeal the May 2, 2006, and May 15, 2006, funding commitment decisions of the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company in the above-captioned matter.

Summary and Statement of Facts

The Schools filed their respective Funding Requests for Funding Year 2006. These included FRN 1487022 and FRN 1485797. For both of these FRNs funding was denied for the following reason:

For FRN 1487022 and 1485797 – FCC rules require that a contract for the products/services be signed and dated by both parties prior to the filing of the Form 471.

Discussion

In order to help insure competitive bidding and a process free of waste, fraud and abuse, USAC's rules require that parties have a "signed contract" or a "legally binding" agreement before the Form 471 is filed. In this case, Emtec and Salem School District have a "legally binding" agreement which consists of a signed agreement and Emtec equipment quotes. Both of the quote lists, one for John Fenwick Elementary School and one for Salem Middle School, include a list of equipment to be provided to that school and the price of the equipment. (See Attachment A, Agreement; Attachment B, Quote for John Fenwick Elementary

School; and Attachment C, Quote for Salem Middle School.) Taken together, the signed, dated agreement and the quotes make up an enforceable, legally binding agreement. The Agreement was also provided to the SLD during PIA.

When Salem School District filed the Form 471s on behalf of John Fenwick Elementary School and Salem Middle School, it made a mistake and filed in an incorrect date of July 1, 2007, in Block 5, Box 18 of both Form 471s for the contract award date. Since the signed agreement with Salem School District was done in February, the Form 471 was filled out in error. John Fenwick Elementary School and Salem Middle School, both of which are located in Salem School District, have a legally binding contract in place for funding year 2006 and the contract is in place before Emtec will begin service.

Recently, the FCC did waive section 54.504(c) of the Commissions rules for Richmond County School District.¹ Richmond County School District decision allowed for a waiver of the rules since the school district had met the “spirit of the requirements” even if a few of the technicalities were not met. The FCC determined Richmond County had a legally binding contract in place during the funding year at issue and the policy behind the rule had been satisfied even if Richmond County had not met the technical requirements of the rule.²

There is no evidence here the Schools or Emtec are in any way trying to commit fraud, waste, or abuse on the program. Instead, the Schools will suffer undue hardship unless the Funding Request is granted. Under the signed agreement, if John Fenwick Elementary School and Salem Middle School do not receive funding, then Emtec will not be required to begin service. As it stands now, both of the Schools will lose this E-rate funding and the services it will facilitate because Salem School District made a technical mistake on the Form 471.

Administrative Action Requested

Accordingly, the Schools request that the SLD reverse the May 2, 2006, and the May 16, 2006, funding commitment decisions, and fund FRN 1487022 and FRN 1485797.

Respectfully,

David Keen, Director of Technology
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¹ See *Requests for Review by Richmond County School District Hamlet, NC, Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-451211, 452514, 464649; CC Docket No. 02-6, Order, DA 06-1265.

² *Id.*, at para. 7.

